

### Remarks

#### 1. Summary of Office Action

In the Office Action mailed June 30, 2005, the Examiner rejected claims 1 and 8 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,493,550 (Raith). The Examiner rejected claim 2 under 35 U.S.C. §103(a) as being unpatentable over Raith in view of U.S. Patent No. 6,275,526 (Kim). The Examiner rejected claims 6-7 and 9-12 under 35 U.S.C. §103(a) as being unpatentable over Raith in view of U.S. Patent Application No. 2003/0096629 (Elliott et al.). The Examiner provisionally rejected claims 1, 7-8, 10, and 12, under the judicially created doctrine of double patenting over claims 1, 6-7, 10, 23, and 40 of co-pending Patent Application No. 10/443,639. And, the Examiner objected to claims 3-5 for being dependent upon a rejected base claim, but the Examiner indicated that claims 3-5 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if the Double Patenting rejection is overcome.

#### 2. Interview Summary

The undersigned participated in an interview with Examiner Jean Alland Gelin on September 20, 2005. During the interview, the Examiner and Counsel for Applicant discussed claims 3-4, 9, and 11, Raith, and Elliott et al. Applicant asserted that the combination of Raith and Elliott et al. fails to disclose "determining if the received radio frequency signals includes pulses having a duration and periodicity appropriate for a beacon issuing from a wireless LAN access point," as recited in claims 9 and 11. No agreement was reached, however.

Next, Applicant pointed out that the claim limitation of "wherein the programming determines if the received radio frequency signal include pulses having a periodicity appropriate for a beacon issuing from a wireless LAN access point," as recited in claims 3 and 4, is similar to

a limitation of claims 9 and 11. Applicant further noted that, in the Office Action mailed 30 June 2005, the Examiner rejected claims 9 and 11 under 35 U.S.C. § 103(a) and objected to claims 3 and 4 as being dependent upon a rejected base claim.

### **3. Amendments and Pending Claims**

Applicant has amended claims 2-3, 5-6, 8-9, and 11 and has cancelled claims 1 and 4. Now pending in this application are claims 2-3 and 5-12, of which claims 3, 9, and 11 are independent.

### **4. Response to Double Patenting Rejection**

The Examiner provisionally rejected claims 1, 7-8, 10, and 12 of this application under the judicially created doctrine of double patenting over claims 1, 6-7, 10, 23, and 40 of co-pending Patent Application No. 10/443,639. Applicant has cancelled claims 1, 6-7, 10, 23, and 40 of co-pending Patent Application No. 10/443,639. Thus, Applicant submits the double patenting rejection of claims 1, 7-8, 10, and 12 is moot.

### **5. Response to Claim Objections**

In the pending Office Action, the Examiner objected to claims 3-5 as being dependent upon a rejected base claim. The Examiner also indicated that for claims 3-5 to be allowable, the claims would have to be rewritten in independent form, including all limitations of the base claim and any intervening claims, and a double patenting rejection would need to be overcome.

Applicant has cancelled claims 1, 6-7, 10, 23, and 40 of co-pending Patent Application No. 10/443,639. Thus Applicant submits the double patenting rejection of claims 1, 7-8, 10, and 12 is moot.

Applicant has cancelled claim 4, and thus, Applicant submits the objection to claim 4 is moot.

Applicant has rewritten claim 3 to be independent and to include all of the limitations of claim 1. In particular, Applicant has amended claim 3 to recite a controller associated with the radio frequency receiver having programming for measuring and analyzing the energy of the received radio frequency signals for the purpose of determining if the radio frequency signals include pulses having a duration and periodicity appropriate for a beacon issuing from a wireless LAN access point. The references, cited by the Examiner in the pending Office Action, alone or in combination, do not teach or suggest the controller as recited in claim 3.

Applicant has also amended claim 5 to depend from independent claim 3. Applicant submits that claims 3 and 5 are now in condition for allowance.

**6. Response to § 103 Rejections (Raith and Elliott et al.)**

The Examiner rejected claims 6-7 and 9-12 under 35 U.S.C. §103(a) as being unpatentable over Raith in view of Elliott et al. Claims 6-7 have been amended to depend from independent claim 3. Thus, claims 6-7 incorporate by reference all of the limitations of claim 3. Applicant respectfully traverses the rejection of claims 6-7 and 9-12 because the combination of Raith and Elliott et al. fails to disclose or suggest all of the limitations of these claims, as required to support an obviousness rejection under 35 U.S.C. § 103(a).

In particular, Raith and Elliott et al., alone or in combination, fail to teach or suggest determining if the received radio frequency signals include *pulses having a duration and periodicity appropriate for a beacon issuing from a wireless LAN access point*, as recited in claims 3, 9, and 11. (Emphasis added).

In rejecting claims 9 and 11, the Examiner stated "Raith does not teach determining if the received radio frequency signals includes *pulse having a duration and periodicity appropriate for a beacon*." (Emphasis added). Applicant agrees that Raith does not teach this limitation.

Further, Elliott et al. is directed to systems and methods for monitoring radio frequency (RF) power. At best, Elliott et al. teaches that a frequency selector may be configured to pass frequencies in the wireless LAN bands, a detector and power estimator may include circuitry for providing an estimation of the RF power of signals received from the frequency selector, and a processing unit may perform data processing functions for inputting, outputting, and processing of RF power measurement data received from the detector and power estimator. (See e.g., paragraphs 30-31).

However, Applicant has not found in Elliott et al. any disclosure of determining if the received radio frequency signals include *pulses having a duration and periodicity appropriate for a beacon issuing from a wireless LAN access point*. (Emphasis added).

Further, in rejecting claims 9 and 11, the Examiner indicated that Elliott et al. teaches a monitoring device which includes an RF intensity display for displaying the estimated RF power levels of received RF signals. The Examiner cited to paragraph 25. But as far as Applicant can tell, this section of Elliott et al. states merely that the frequency selector may pass frequencies in the wireless LAN bands, the detector and power estimator may include circuitry for providing an estimation of the RF power of signals received from the frequency selector, and a display may include mechanisms for displaying the estimated RF power level of received RF signals. However, Elliott et al. does not teach or suggest determining if the received radio frequency signals include *pulses having a duration and periodicity appropriate for a beacon issuing from a wireless LAN access point*. (Emphasis added).

Because the combination of Raith and Elliott et al. fails to disclose or suggest all of the limitations of claims 3, 9, and 11, a prima facie case of obviousness of these claims does not

exist. Further, because each of claims 6-7, 10, and 12 depends from claim 3, claim 9, or claim 11, a prima facie case of obviousness of claims 6-7, 10, and 12 does not exist as well.

**7. Response to § 103 Rejections (Raith and Kim)**

The Examiner rejected claim 2 as being unpatentable over Raith in view of Kim. Applicant has amended claim 2 to depend from independent claim 3. Applicant respectfully traverses the rejection of claim 2 because the combination of Raith and Kim fails to disclose or suggest all of the limitations of this claim, as required to support an obviousness rejection under 35 U.S.C. § 103(a).

In particular, Raith and Kim, alone or in combination, fail to teach or suggest determining if the received radio frequency signals include *pulses having a duration and periodicity appropriate for a beacon issuing from a wireless LAN access point*, as recited in claim 3. (Emphasis added).

As noted above, in rejecting claims 9 and 11, the Examiner stated "Raith does not teach determining if the received radio frequency signals includes pulse having a duration and periodicity appropriate for a beacon." Applicant agrees that Raith does not teach this limitation. Moreover, Applicant submits that Kim does not teach or suggest this limitation, as well.

At best, Kim teaches determining the pulse *duration* of the received data signal, and determining the time interval *duration* DO of the initial pulse and the unit time interval *duration* Ud of the data pulse SUD, which, in combination, constitute a pulse data signal. (See, e.g., Col. 4, lines 44-47, Col. 5, lines 29-30). (Emphasis added).

Because Raith and Kim do not teach or suggest all of the elements of claim 3 and because claim 2 depends from claim 3 and incorporates by reference all of the limitations of claim 3, claim 2 is allowable over the combination of Raith and Kim.

**8. Response to § 102 Rejections**

The Examiner rejected claims 1 and 8 under 35 U.S.C. §102(e) as being anticipated by Raith. Applicant has cancelled claim 1. Thus, the rejection of claim 1 is moot. Applicant has amended claim 8 to depend from independent claim 3. Thus, claim 8 incorporates by reference all of the limitations of claim 3 and is allowable for the same reasons as claim 3.

**9. Conclusion**

For the foregoing reasons, Applicant submits that claims 2-3 and 5-12 are in condition for allowance. Therefore, Applicant respectfully requests favorable reconsideration and allowance of all of the claims.

Respectfully submitted,

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